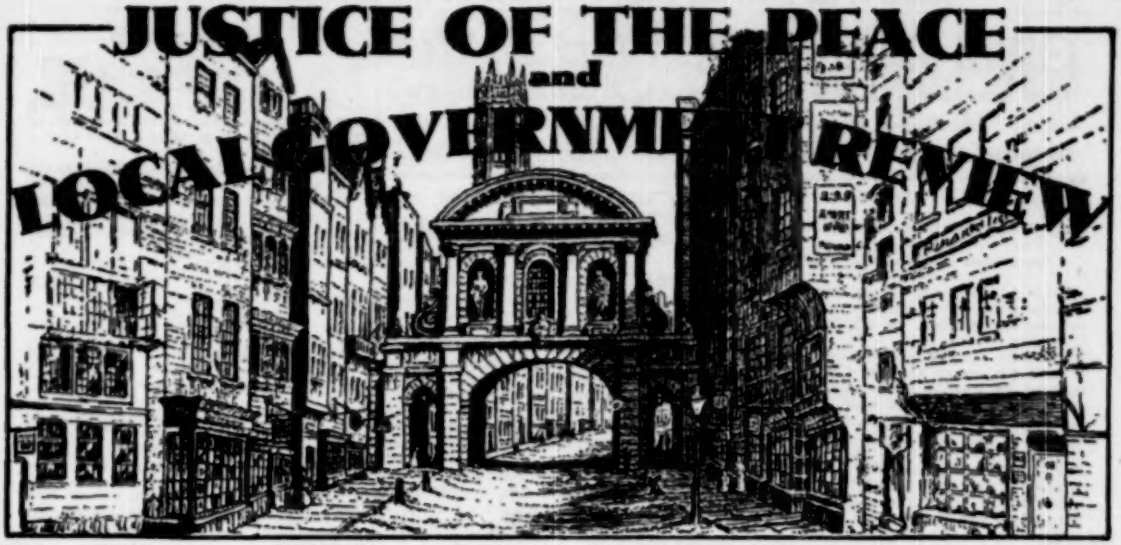

VOL. CXIV. LONDON: SATURDAY, SEPTEMBER 30, 1950. No. 39

CONTENTS

Official Advertisements, Tenders, etc.

Official Advertisements (Appointments, Tenders, etc.), 2s. per line and 3s. per displayed headline. Miscellaneous Advertisements 24 words 6s. (each additional line 1s. 6d.) Box Number 1s. extra. *Latest time for receipt—9 a.m. Wednesday.*

COUNTY OF KENT

Petty Sessional Division of St. Augustine

Appointment of Clerk to the Justices

APPLICATIONS are invited from duly qualified persons for whole-time or part-time appointment of Clerk to the Justices and Collecting Officer.

The gross inclusive salary for the Clerkship is £955 per annum and the Clerk will be required to provide office accommodation and to bear the cost of staff, books and stationery, and all expenses incidental to the office. The remuneration for the Collecting Officership is an inclusive commission at the rate of 5 per cent., which, for the year 1949, amounted to approximately £470.

The appointment will be at the pleasure of the Justices and the Clerk will be required to give at least three months' notice to determine it.

Applications stating age, qualifications and experience, together with the names of three referees, must be received by the undersigned not later than October 9, 1950.

Canvassing, directly or indirectly, will disqualify.

WILLIAM COLTHUP,
Chairman of the Justices.

Hopebourne,
Harbledown,
Nr. Canterbury.

LLANTRISANT AND LLANTWIT FARDRE RURAL DISTRICT COUNCIL

Appointment of Clerk of the Council

APPLICATIONS are invited from Solicitors with previous local government experience for the appointment of Clerk of the Council.

The salary payable will be at the rate of £900 per annum, rising by two increments of £50 to a maximum of £1,000 per annum.

The person appointed will be expected to undertake, without additional remuneration, all the legal work of the Council, including conveyancing and attendance at the Courts, and the salary paid shall be deemed to be inclusive; and all fees and other emoluments, except fees in connexion with his duties as Returning Officer and Registration Officer, etc., shall be paid into the Rate Fund.

The appointment will be subject to three months' notice on either side, and to the provisions of the Local Government Superannuation Act, 1937. The successful candidate will be required to pass a medical examination to be undertaken by the Council's Medical Officer of Health.

Applications, stating age, experience and qualifications, and accompanied by two recent testimonials shall be delivered to the undersigned not later than 10 *a.m.* on Wednesday, October 4, 1950.

D. J. M. PEREGRINE,
Clerk of the Council.

Council Offices,
School Street,
Pontyclun, Glam.
September 21, 1950.

COUNTY OF SOMERSET

Appointment of Male Probation Officer

THE PROBATION COMMITTEE for the Somerset Combined Area invite applications for the appointment of a whole-time male probation officer. The appointment will be subject to the Probation Rules and salary will be paid in accordance with these rules, together with a travelling allowance. The salary will be subject to superannuation deduction, and the selected candidate will be required to pass a medical examination. Applicants must be not less than 23 and not more than 40 years of age, unless the applicant is at present serving as a full-time probation officer.

Applications, stating age, qualifications and experience should be addressed to reach the undersigned not later than October 11, 1950.

Testimonials are not at present required but candidates should give the names of three referees to whom inquiries can be addressed.

Canvassing, either directly or indirectly, will be a disqualification.

HAROLD KING,
Clerk of the Peace.

County Hall,
Taunton.

BOROUGH OF EPSOM AND EWELL

Assistant Solicitor

APPLICATIONS are invited for the appointment of Assistant Solicitor in the Town Clerk's Department at a salary in accordance with Grade A.P.T. VII of the National Scales (£635–£710 p.a.) plus London area weighting (£30 p.a.).

Candidates must have had previous experience of conveyancing and advocacy, and local government experience will be an advantage.

The successful candidate will not be permitted to engage in private practice, and the appointment will be subject to the National Conditions of Service; one month's notice on either side; the provisions of the Local Government Superannuation Act, 1937; and to the successful candidate passing a medical examination.

Canvassing in any form will be a disqualification, and candidates must disclose in their application whether to their knowledge they are related to any member of the Council or to a holder of any senior office under the Council.

Applications, stating age, present and previous appointments, qualifications and experience, together with the names of two referees, must be sent to the undersigned so as to reach him not later than October 7, 1950.

EDWARD MOORE,
Town Clerk.

Town Hall, The Parade, Epsom.
September 22, 1950.

CITY OF OXFORD

Assistant Solicitor

APPLICATIONS are invited for the permanent post of Assistant Solicitor on Grade VIII of the National Scales of Salaries (£685 x £25–£760).

Applications, on forms obtainable from me, must be delivered to me by October 21, 1950.

Canvassing of members of the Oxford City Council either directly or indirectly in connexion with this appointment will disqualify the candidates.

HARRY PLOWMAN,
Town Clerk.

Town Hall, Oxford.

COUNTY BOROUGH OF WEST HAM

Appointment of Assistant Solicitor

APPLICATIONS are invited for appointment of Assistant Solicitor. Salary A.P.T. VI/VII, £595 to £710 (plus London Weighting, £20-£30 according to age)—with commencing salary according to experience. Experience in town planning work an advantage.

Applications with two testimonials by October 5, to me from whom conditions of appointment may be obtained.

G. E. SMITH,
Town Clerk.

West Ham Town Hall,
Stratford, E.15.

COUNTY OF NOTTINGHAM

Borough of Newark. Petty Sessional Division of Newark. Petty Sessional Division of Southwell

Appointment of First Assistant to Clerk to the Justices

APPLICATIONS are invited for the above full-time appointment. Applicants must have a thorough knowledge of the work of a Justices' Clerk's Office, including the issuing of process, the keeping of accounts, the taking of Depositions and be capable of acting as Clerk to the Court if required. The applicant must be an experienced typist and experience in shorthand would be an advantage. The salary will be on the scale £420×£15 to £465 per annum. The appointment will be subject to one month's notice on either side and will be also subject to the provisions of the Local Government Superannuation Act, 1937, the successful candidate being required to pass a medical examination.

Applications, stating age and experience, together with copies of two recent testimonials, must reach Mr. R. Neville Ross, Clerk to the Justices, Town Hall, Newark, not later than Wednesday, October 11, 1950.

K. TWEEDALE MEABY,
Clerk of the Standing Joint Committee.

Shire Hall,
Nottingham.

INQUIRIES

Justice of the Peace
and
Local Government Review
[ESTABLISHED 1837.]

VOL. CXIV. No. 39. Pages 546-561 | LONDON : SATURDAY, SEPTEMBER 30, 1950 | Price 1s. 8d.

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NOTES of the WEEK

Bias in a Clerk

In *R.* v. *Lower Munslow Justices, ex parte Pudge* [1950] 2 All E.R. 756, it was argued on a motion for a writ of *certiorari*, that a decision of justices should be upset on the ground that the clerk to the justices had previous knowledge of the matter before the justices and had improperly given them information which had affected their decision. The High Court held on the facts of this case that the clerk and the justices had behaved with complete propriety. What we think important are certain observations of the Lord Chief Justice. Dealing with the suggestion that the clerk was interested in the matter and had been informing the justices of matters within his personal knowledge, Lord Goddard said : " Of course, if such a thing were done it would be a matter of the gravest moment. It would certainly be a ground for *certiorari*, and it might be a ground for putting forward strong recommendations to the bench that they had better get rid of their clerk."

But he went on to say that it is well known that country clerks to the justices are frequently busy solicitors and as such they may know a great deal about everybody's affairs in the neighbourhood but " it would be an astonishing doctrine to lay down that because a justices' clerk knows something about the matter before the court and his knowledge has been acquired owing to a transaction he has had with some previous person connected with the subject-matter of the litigation he is thereby debarred from acting as clerk. Of course, if he communicates his knowledge to the justices and tells them facts which would mean that he was giving evidence behind the backs of the parties and not being subjected to cross-examination, he would be acting most improperly."

Lord Goddard added later that there could be no objection, after the case had been decided and the justices were *functus officio*, to the clerk telling them something from his previous knowledge by way of a comment on their decision in the case.

The Lord Chief Justice also stated that had the clerk in this case acted previously for one of the parties in the case, it would have been an entirely different matter, but he had not, he had acted for a third party who had no concern with or interest in the proceedings before the justices.

Stopping the Hearing

In *R.* v. *Lower Munslow Justices, ex parte Pudge* [1950] 2 All E.R. 756, to which we have referred in another connexion, one of the points taken by the appellant was that the justices had acted improperly in stopping the case before the defendant in the proceedings had concluded his evidence, and giving a decision in the defendant's favour at that stage. The justices were concerned with an application under the Small Tenements Recovery Act, 1838. The applicant for possession gave his evidence, and the tenant was giving evidence when the justices announced that the application would be dismissed on the ground that the tenancy was a yearly and not a weekly one. It was argued that the justices, having found that the applicant had made out a case which the tenant must answer, should have allowed the applicant to cross-examine the tenant and make any submissions he wished to, and that by their not doing so there had been a denial of natural justice or a failure to demonstrate that justice was being done.

The High Court did not accept this contention. Lord Goddard said : " Perhaps it would have been better if the justices had done this (*i.e.*, stopped the case) before the tenant had gone into the witness box, but how can it be said that what occurred amounted to a denial of natural justice." Byrne, J., said he did not think that, if on reflection while the defendant was giving evidence, the justices came to the conclusion that they were wrong in holding there was a case to answer they were obliged to wait until the defendant had been cross-examined and submissions had been made to them before they dismissed the application. Finnemore, J., said that, speaking for himself, he thought it is often wiser for a court to invite, or to allow, the party against whom the decision is being given to address the court if he so wishes, but that there is no bounden duty to do so.

It will be remembered, of course, that the procedure in cases under the Small Tenements Recovery Act is a special one and the Summary Jurisdiction Acts and procedure do not apply.

Railway Fraud Penalties

By the Regulation of Railways Act, 1889, a maximum penalty of 40*s.* was provided for an offence against s. 5 (1) and for a first offence against s. 5 (3). By the British Transport Commission Act, 1950, this maximum has been increased to £5 in the application of the 1889 statute to the railways of the British Transport Commission. This effects an increase which many people have considered long overdue, because swindling railway companies is a comparatively easy form of dishonesty which is all too prevalent and which should, when detected, normally be made at least very unprofitable for the offender. The amending section of the 1950 Act (s. 41 (1)) further provides (s. 41 (2)) for increases in the maximum penalties under s. 91 of the London Passenger Transport Act, 1936, by enacting that in s. 91 (1) and 91 (2) of this last named Act " five pounds " is to be substituted for " forty shillings " and " twenty pounds " is to be substituted for " five pounds." Finally s. 41 provides in subs. (3) that s. 47 of the Tramways Act, 1870, in its application to any byelaws made by the British Transport Commission pursuant to s. 46 of the 1870 Act and s. 61 of the London Passenger Transport Act, 1938, shall have

effect as if " five pounds " were substituted for " forty shillings." The byelaws referred to can deal with a variety of matters affecting the running and use of tramway cars.

Proving a Statute

The British Transport Commission Act, 1950, referred to in the preceding note of the week, is a local Act and may, therefore, not be so widely circulated as a public Act would be. According to reports in the national press, in at least one court a question arose as to the correct method of informing the court as to the new maxima. It was reported that the court had refused to have regard to these changes in the law unless the prosecution produced to them a King's Printer's copy of the 1950 statute. We are always chary of commenting on what is said to have happened in a court without having the chance of checking the detailed accuracy of the report. It is clear that the Act in question is one which does not need to be proved and of which judicial notice must be taken (*see* 13 *Halsbury* (2nd edn.) 656, para. 726). It would seem therefore that all courts are bound to take notice of and to give effect to the provisions of this new Act and that they should be prepared to look at any copy of it without requiring that it should be a King's Printer's copy. A Stationery Office copy, for example, would serve the purpose. The report to which we have referred stated that it is extremely difficult to obtain King's Printer's copies but that Stationery Office copies are easily procurable.

The relevant paragraph in *Halsbury* to which we have referred is " Public statutes are judicially noticed and no proof of them is required. The same is the case with local, personal and private Acts which were passed since January 1, 1851, or which, though passed before that date, contain a declaration that they are to be treated as public." The Interpretation Act, 1889, s. 9, is the authority as to local, etc., Acts passed since January 1, 1851, and it provides as stated above, unless the Act in question expressly provides otherwise.

The Shops Act, 1950

This Act comes into force on October 1, 1950, and is stated in a circular issued by the Home Office to be purely a consolidation Act which makes no change in the existing law. It repeals and replaces a number of statutes. The Shops Acts, 1912, 1913, 1934 and 1936, the Shops (Hours of Closing) Act, 1928, the Hairdressers' and Barbers' Shops (Sunday Closing) Act, 1930, the Retail Meat Dealers' Shops (Sunday Closing) Act, 1936, and the Shops (Sunday Trading Restrictions) Act, 1936, are completely repealed. The other repeals are the Factories Act, 1937, s. 98 (6), the Young Persons (Employment) Act, 1938, ss. 8, 11, 12 and 13, and the amendments of the Shops (Sunday Trading Restrictions) Act, 1936, contained in the National Health Service Act, 1946, sch. 10, reg. 60AB of the Defence (General) Regulations, 1939, is also repealed. This regulation dealt with temporary amendments of enactments relating to the closing of shops, and in this connexion s. 7 of the new Act is to be noted.

As there are no amendments in the law we do not think the new Act calls for detailed comment. Part I deals with hours of closing, Part II with conditions of employment, Part III with modifications, in special cases, of Parts I and II, Part IV with Sunday trading and Part V contains various general provisions, including those dealing with enforcement.

The Home Office circular referred to above states also that the passing of this Act " helps to prepare the way for the introduction in due course of amending legislation in the light of the report of the Gowers Committee on Closing Hours of Shops." It is to be hoped that this will not lead to a further series of statutes through which those interested will have to search in order to ascertain the law. Meantime everyone will welcome the convenience of having the present provisions collected and set out in the new Act.

Injured Animals

Section 11 of the Protection of Animals Act, 1911, provides that where one of the animals named in the section is seriously injured a constable may, on certain conditions, have it put to death. The importance of the section, apart from its humanitarian purpose, lies in its protecting the constable from a claim for damages. The commonest application of the section is where a horse falls and is injured in the streets. A recent London case, in which a horse, which had bolted and was hurt to death by heavy traffic, lay dying for some two hours in a very busy street because no veterinary surgeon was available, suggests that the section is defective in at least two relevant ways. The main condition empowering the constable to act is that he shall have called a veterinary surgeon, if one resides within a reasonable distance, and he may act upon that surgeon's certificate alone. It follows that if a veterinary surgeon does reside within a reasonable distance, but is out on his rounds or otherwise unable, or unwilling, to come to the scene of the accident, the constable cannot act under the section at all. Nor can he do so if no veterinary surgeon resides within a reasonable distance. We have not looked up the debates upon the Bill, but to our mind the section as enacted suggests hasty amendment in committee; to omit such obvious cases does not look like the work of the parliamentary draftsman. If opportunity ever occurs a private member's Bill would be a suitable vehicle for amending the section, so as to provide for the overlooked contingencies. Although horse traffic is much less than in 1911, modern roads are much worse for horses than those of forty years ago, while the growth and character of other traffic mean that horses who still use the roads are more exposed than in 1911 to risk of serious injury. Moreover, although the section is by subs. (4) confined to a few animals, it is not wholly confined to horses; it covers country animals such as cattle (*see* s. 15 (*d*)) and sheep, which while going about their lawful occasions upon the roads of agricultural areas are in these days much exposed to risk of injury.

The Mace

A proposal for presenting a mace to an urban district council raises some interesting questions, of custom and propriety rather than of law. The New Oxford Dictionary speaks of a mace as " A sceptre or staff of office, resembling in shape the weapon of war, which is borne before (or was formerly carried by) certain officials: also formerly the sceptre of sovereignty." Its use in boroughs is ancient; according to Jewitt and Hope's *Corporation Plate and Insignia of Office*, the standard work upon this and allied topics, two classes of civic mace are recognized, namely sergeant's or small maces, carried by sergeants-at-mace as emblems of authority, and " great maces," borne before a mayor or bailiff as a mark of dignity, and in token of the authority vested in him. This coupling of mayors and bailiffs indicates that the mace may well be older than the office of mayor, and also that it is a symbol of an authority delegated to the chief officer of a borough by the King. Though the title " bailiff " has gone out of use in England, for the head of the government of an area, it is worth remembering that in the island of Jersey, and in the bailiwick of Guernsey (which extends beyond the island of Guernsey), the bailiff is the chief civil officer, exercising functions both as president of the Royal Court

(with unlimited criminal and civil jurisdiction) and as president of the legislature. By the fifteenth century the privilege of having sergeants-at-mace had come to be regarded as one conferred or confirmed by the King by charters or letters patent, and these sergeants were also usually empowered to carry silver or gilt maces before the mayor or bailiff for the time being: *Jewitt and Hope*, p. xliv. It is not certain when the name "great mace" first began to be applied to that borne before the mayor, but at the end of the sixteenth century it began to be regarded as a necessary ornament of every well-regulated borough and a mace bearer was appointed to carry it (*ibid.* p. xlv). It is estimated in Tweedy Smith's *Mayors, Aldermen and Councillors* published in 1934 that there were then about 500 sergeants' civic maces in existence, ranging in date from the fifteenth century to the present time (some towns possess more than one), and of the great maces there were about 90, mostly of the seventeenth and eighteenth centuries. According to *Jewitt and Hope*, some fifty new maces had been made during the sixty years before 1895, only a few of them for old boroughs and the rest for newly incorporated towns. The earliest civic maces did not, however, embody the crown in their design. This came into use pretty generally in the reign of Charles I; it may well have been an emblem of loyalty. It was ordered during the Commonwealth to be removed from the mace of the House of Commons and others used "in the Commonwealth," and was naturally restored in 1660, since which date the normal form of a civic mace has been with the head in the shape of a royal crown. Frequently the royal arms are emblazoned, sometimes alternately with the borough arms, and the Royal Cypher may be added—commonly that of the monarch in whose reign the borough was incorporated or the mace brought into use. Though these adornments are not obligatory, except for the mace of the House of Commons and those used in and about governmental ceremonies, and are indeed not universal, they are regarded as regular, and form an exception (the only one we call to mind) from the rule that the royal arms and cypher may not be used by a subject without express permission. In fact, the right to use a civic mace, though formerly granted expressly, is now regarded as implied by the incorporation of a borough, and to carry with it by implication the right to decorate the mace with the royal arms and cypher. From what has been said, it will be seen that a mace would not be apt for a civic body not called into being by the King; indeed, even in a borough the mace is, it seems, properly the symbol of the mayor's authority, not a symbol attaching to the corporation.

Sub-Letting for Immorality

In *Yates* v. *Morris* [1950] 2 All E.R. 557, the Court of Appeal had to consider a decision of the county court judge at Westminster, suspending an order for possession under the Rent Restrictions Acts. The landlord sought possession upon the statutory ground in paragraph (*b*) of sch. 1 to the Act of 1933, namely conviction of the tenant for allowing the premises to be used for an immoral purpose. The learned judge found that the facts were as stated by the landlord, so that the landlord was entitled to possession but, when ordering possession to be given in twenty-eight days, he suspended the order "provided no further nuisance occurs." The decision of the Court of Appeal is of value both because of the comparison drawn between the statutory provision in question and s. 146 (2) of the Law of Property Act, 1925, and also because the Court so evidently differed from the view of the merits taken by the learned county court judge, and yet felt itself not bound to overrule him. The landlord contended before the Court of Appeal that the learned county court judge, having found the facts proved and made an order for possession, had no jurisdiction to suspend it or, if he had jurisdiction, ought not to have done so. The expressed ground of his doing so was that the tenant had invested all her savings in improving the property, with the object of sub-letting, for which she had obtained the landlord's permission, and that most of her sub-tenants had been there for many years, and were respectable people. As against this, there was evidence that two prostitutes, proved to have used the premises as their place of business, did so with the tenant's knowledge. The Court of Appeal indicated that on merits it was a case upon the extreme borderline, but refused to hold that the court below did not have jurisdiction, under s. 4 of the Rent and Mortgage Interest Restrictions Act, 1923, or otherwise to temper justice (which would have given the landlord the benefit of all the tenant's improvements) with mercy by giving her another chance.

The Modern Law Review

In the *Modern Law Review* for July the first place is taken by a paper on the "Disciplinary Powers of Professional Bodies," by Mr. Dennis Lloyd. This is a topic of increasing importance, now that almost all professions are becoming closed, and when it is the tendency of Parliament to entrust to some tribunal of the profession itself, with or without added members, the control of its own discipline. English courts have taken some time to make up their mind (if indeed they have yet done so), between jealousy of bodies which in a sense are rivals to the courts and a desire to encourage self-government within bodies of responsible persons. The recent much quoted criticism of procedure in the national health service by Lord Justice Denning, is, at the end of Mr. Lloyd's paper, put into relation with other forms of domestic tribunal. An interesting and important comparison, which will have escaped the notice of most English readers, is made between decisions of the English courts and the Supreme Court of the Republic of Ireland, which in 1948 had occasion to consider the position of the Turf Club. The same issue of the *Review* contains the first part of a paper by Mr. J. D. B. Mitchell upon "Limitations of the Contractual Liability of Public Authorities." This first part is largely historical, and we shall wait with interest to see how Mr. Mitchell's argument develops, in relation particularly to public authorities brought into existence by statute in recent years.

Sales Above Existing Use Value

The case of *Earl Fitzwilliam's Wentworth Estates Co.* v. *Minister of Town and Country Planning* [1950] 2 All E.R. 765, is at least of indirect concern to local authorities, in that it confirms the validity of the method adopted by the Central Land Board for dealing, by compulsory purchase, with cases where land is sold at higher than its existing use value. It will be remembered that we have had a contributed article upon the economics of this matter, and there has been a good deal of doubt about the course which the Central Land Board has taken in some cases, and intimated that it would take as a matter of principle in others. Although the Attorney-General prevailed on Birkett, J., to find in favour of the Central Land Board, whose order under s. 43 of the Town and Country Planning Act, 1947, was confirmed by the Minister of Town and Country Planning, yet there is an important qualification to be observed. The learned judge held that the compulsory purchase order would have been invalid if it had been exercised with the sole purpose of enforcing a predetermined policy. Substantial extracts from the Central Land Board's circular "House 1" upon this subject were read, with extracts from correspondence between the parties and between the Board and the Sheffield

City Council. The upshot of all this was that the court was able to find that one, at any rate, of the objects for which the compulsory purchase was made was to facilitate the erection of houses, which were badly needed in Sheffield, and, inasmuch as the Central Land Board had never in terms stated that their sole purpose was to enforce their own policy, the making and enforcement of the compulsory purchase order could be upheld. It is indicated at the end of the judgment that the matter was doubtful, and the result may well be to impose some caution upon the future exercise of this power of purchase.

SOCIAL WORKERS AND THE LAW

An experienced social worker, writing to a clerk to justices about her work, recently said " You have the cases in court, and we have them in the office before and after. We are often somewhat amazed at the decision of the judge or magistrates. We often know far more of the facts than are disclosed in court."

That is an opinion fairly commonly expressed by social workers, and it is not surprising that, feeling this to be true, they get into the way of thinking that the law stands in the way of good works, and sacrifices the welfare of young people to mere technicalities. One old-time probation officer, after having some legal obstacle to what she proposed explained to her, observed simply : " Isn't it all silly ? "

It would be foolish to brush all this aside as of no importance. The courts owe much to the services of social workers, official and unofficial, and the best results can be achieved only when there is mutual understanding and appreciation. Therefore it is well worth while to consider what can be done to meet the complaint of the social worker, and at all events to explain to him or her the reasons for the attitude and decisions of the court, which sometimes give rise to so much disappointment.

It is often true that the social worker knows, or feels, that he or she, knows much more of the facts than is allowed to be given in evidence. In passing, it may be mentioned that this is also true of the police in many a criminal prosecution. Rules of evidence require a certain standard of proof, or prohibit the giving of certain kinds of testimony, or the calling of certain persons as witnesses. These rules often seem irksome, but in the main they are based on the experience, wisdom and learning of generations of judges, and the more we study them and see them applied the more we are persuaded that, with occasional exceptions, they make for the just administration of the law. The reply of the social worker is likely to be that this is no doubt very wise and proper when a court is trying people for offences, but that surely it is unnecessary when the issue before the court is something quite different, when no one is on trial or in danger of punishment, and only the welfare of an unfortunate child is involved. It is in the juvenile court that this situation most often arises, though the same sense of frustration sometimes shows itself in the social worker, perhaps a probation officer, in the adult court.

So far as the welfare side of the work of the juvenile court is concerned, in the care or protection case for example, there is a considerable body of opinion in favour of relaxation of existing rules of evidence, and some people advocate informal procedure with power in the court to hear whatever evidence it considers helpful, without regard to rules of admissibility. These people point out that everyone concerned is anxious only for the good of the child, that trained social workers are trustworthy and will not mislead or prejudice the court, and that the less the proceedings resemble a trial the better. Why, they ask, should not social workers be allowed to make confidential communications to the court, since public statements may prove embarrassing and make relations with the family strained.

To this it must be replied that at present, at all events, the juvenile court is a court of law, and not a committee, and that its proceedings must be regulated according to statute or rules made under the authority of statutes. In civil cases the same strictness is not observed as in criminal trials, but rules there must be. Moreover, even the welfare steps taken by the court may involve interference with parental rights and family life—interference which is sometimes resented, however mistakenly, by parent and child. They cannot be expected to take the magistrates and the social worker on trust, and to rest confident that all are well intentioned. It is part of the job of the court and the social worker to win this confidence. The best way of doing this is to make it plain that everything done is fair, that nothing is said behind the back of the person concerned, and that any fact in dispute will be tested by the well-established method of questioning and by weighing conflicting statements, by whomsoever made.

When the social worker says he or she knows so much more than is allowed to come out in court, that is a perfectly honest statement, but not necessarily to be accepted without question as accurate. The probability is that it would be more correct to use the word " believes " instead of " knows." The social worker may be influenced by what the neighbours say but are not prepared to substantiate in court. It may be true : it may convince the social worker, but it is hearsay and not good enough for the court. Further, even the most experienced worker may occasionally fall into an error of judgment or be misled. The court must judge the facts, and cannot delegate its function to anyone else, however trusted and respected.

Social workers who occupy official positions, like probation officers, generally have some appreciation of the position, even if they do not altogether like it. It is often the devoted voluntary worker who feels most disappointed and exasperated by the methods and decisions of the court. There is one way in which this feeling can be partly assuaged, and that is by attempting to show the social worker how and why the court must do its duty according to law. Then the methods of the court will be intelligible and sensible, even if not acceptable, in the eyes of the social worker.

There are today many opportunities for social workers to make some study of the principles of the law and the way in which it works. Suitable literature is available for those who, without wishing or needing to make any profound study of the subject, feel that it would help them if they knew a little about it. Then there are lectures and conferences at which there are opportunities for questions and discussion, from which it is possible not only for the social worker to learn some of the merits of the legal approach to some parts of his work, but also for the lawyer or official of a court to see the other side of the matter, and perhaps to be put on inquiry as to the possibility of improvement in the law and practice of the courts. The court wants to find out where the truth lies and, acting on that foundation, to do justice. If there is ground for action on its part it joins with the social worker in the desire to do what is best for any who need help.

REPORT OF THE COMMISSIONER OF METROPOLITAN POLICE FOR 1949

We always think that the most interesting point about this annual report is not any particular feature or statistics, but the general picture which it gives of the wide scope of the work so well and ungrudgingly done for Londoners by their police force. We all know that the modern police officer performs for us duties which belonged originally to each one of us as citizens, and that we can still, on pain of penalty, be called upon to help him if present, and physically able. We know equally well that the work now is so highly specialized that a good deal of it could not be undertaken by the average person without considerable training, and we are well content to leave the policeman to act for us. Having regard to the importance to us all, not occasionally but all the time, of an adequate police force, we are disappointed to read that with a few welcome exceptions, the housing authorities in the Metropolitan Police District have felt unable to assist the Commissioner by making available to police officers a certain proportion of new houses as they are completed. He acknowledges the difficulties, but states that the assistance given in his area is much less than that given to police in other parts of the country, and he has no doubt that this is one cause of the greater deficiency in strength in the Metropolitan force compared with many other forces in the country.

A very useful side to the activities of members of the force is touched upon in the report. The Commissioner welcomes the help given in their spare time by police officers in connexion with youth club movements. Thirty-nine are acting as instructors with Sea and Army cadets and Air Training Corps, thirty-four are scoutmasters, and 181 are working in various London youth clubs. In October, 1948, a Metropolitan Police branch of the B.P. Guild of Old Scouts was formed, and by the end of 1949, 240 officers of all ranks and most branches of the force, including some women officers, had joined.

The progress in the use of police dogs is detailed, and we understand that the twenty referred to in the report as being the number authorized at the end of 1949 has now been increased to thirty-nine. This is clear proof that experience has justified their use. It is stated in the report that their use is to be extended to all the four districts, and it is anticipated that they will be particularly helpful in police work on commons and open spaces in the outlying area. Dog lovers will be interested to learn that, apart from one Yoghund bitch bought as an experiment for tracking purposes, the dogs used are all Labradors or Alsatians. The writer has seen some of them at work at demonstrations, and there can be no doubt that they can add considerably to the criminal's difficulties in trying to make good his escape.

Those who have to drive through central London during the peak traffic periods will not be surprised that the Commissioner expresses concern about the congestion which may well result from the Festival of Britain in 1951. The south bank site, in particular, would appear likely to cause all sorts of trouble because traffic to and over Westminster and Waterloo bridges is already so heavy that at times serious delay is occasioned, and if to the existing traffic there are to be added hundreds of cars driven by visitors not accustomed to London traffic the result may possibly be that nothing will be able to move at all for quite considerable periods. Those responsible for the plan must have thought of this difficulty, but the Commissioner is obviously not very happy at the prospect.

Scotland Yard continues to attract numerous visitors, so much so that permission to visit has to be restricted to those with a professional interest in police work. Despite this restriction there were four times as many visitors in 1949 as in 1938, and they came from fifty-three different countries in almost every part of the world.

The interest in Scotland Yard is not surprising, for it is there, of course, that are housed the information room, the criminal record office and the fingerprint department. The figures in the report give some idea of the magnitude of the work of these offices, but only practical experience of their day to day working can show, as it does, their supreme efficiency and mastery of detail. To take the Criminal Record Office as an example, we find that in 1949, 44,210 new files were made up and 65,062 re-convictions were recorded, together with 12,725 search forms made up. Thus for the whole country 121,997 convictions were recorded. To enable full use to be made of the information available in the Record Office reliance has to be placed, of course, on the fingerprint branch. Here, during 1949, 117,465 fingerprint forms were received. In 1938 the number was 83,651. The number of forms in the main collection totalled, in 1949, 1,091,189. The system of indexing and searching is such, however, that experience shows that frequently not more than half and hour elapses from the time when a court or station causes an inquiry to be made (relying upon fingerprints taken from a prisoner) before Scotland Yard furnishes the full record of that prisoner. But the Metropolitan police were not satisfied. The Report notes that advantage was taken in 1949, of the relief afforded by the slight reduction in crime, to rearrange the main fingerprint collection. This was an immense task, but the Commissioner is able to say that its worth has been proved by the greater speed and accuracy with which searches can now be made.

Then there is, of course, the Metropolitan Police Laboratory which produces such startling and conclusive evidence from material which the criminal hoped that he had so successfully destroyed or damaged as to make it valueless to the prosecution.

Tribute is paid to the work of the special constables whose self-sacrificing work is of particular value at a time when the regular force is still so far below its authorized establishment. 2,515 " specials " performed 56,798 four hour tours of duty, and special constables also underwent 77,000 hours of instructional training. The establishment of the uniform branch of the regular force was 18,330 all ranks. The actual strength on December 31, 1949, was only 14,184. This inevitably means that there is a serious shortage, especially in the outer divisions, of men on the beat, and the man on the beat cannot for all purposes be replaced by the man in the car. In spite of the increases of pay resulting from the Oaksey Committee's recommendations, recruiting continues to be below what is required. The net gain during the year was only fifty-four men. The prospect is not encouraging, and one cannot be too thankful, in these circumstances, that the 1949 report records a reduction in crime, which we understand is also shown by current figures for this year.

Dealing with juvenile crime (no modern article on police or courts would be complete without a reference to this subject) the Commissioner draws special attention to the increase in arrests of children of nine and ten years of age. In the age nine group they were 349 in 1947, 430 in 1948 and 479 in 1949. In the age ten group the corresponding figures were 467, 543 and 670. In the commissioner's view these, the children of the war years, present an urgent problem that should not be neglected.

They are too young, he says, for most existing clubs, and being unable to remain in overcrowded homes, they run wild in the streets with inevitable results. He gives his support to Lord Aberdare's campaign for clubs for the eight to thirteen age group where these boys could " work out naturally and healthily their normal aggressiveness." In the Commissioner's view any necessary expenditure to support such a movement would be well repaid in the saving of young lives and, as he points out, might save the keep, later on, of these youngsters in approved schools and borstal institutions.

There is much more in Sir Harold Scott's report to which we should like to refer, but we cannot spare the space. We hope, however, that we have aroused in many of our readers sufficient interest to prompt them to buy a copy of the report for themselves. It is published by His Majesty's Stationery Office, and its price is half-a-crown.

SOME FURTHER THOUGHTS ON " FRESH EVIDENCE "

By A. JOHN BROUGHTON, *Clerk to the Warrington Borough Justices*

Many justices and clerks will be familiar with the difficult case of the defendant in matrimonial proceedings, who reiterates (often violently) time and time again, when brought before the court in respect of arrears due under a maintenance order, that the order should never have been made against him because his wife had committed adultery prior to the making of the order. In many such cases a child has been born to the woman and the defendant passionately continues to assert he is not the father of it.

Why should he pay maintenance to an adulterous wife ; and still more, why should he be forced to support a child which he knows is not his? Useless in many cases to explain to him with all the patience possible how the rule in *Russell* v. *Russell* prevented him at the original hearing of the wife's application for an order from giving evidence himself to show that he did not have access to her at the time when the child was conceived ; how, whilst he may have put forward the defence of the wife's adultery and have even succeeded in raising a suspicion of it, this has been insufficient to bring it home to her ; and how what appears to him the final convincing proof in the birth of a child to her, must fail because he cannot establish his non-access by the evidence of a third party and he cannot give such evidence himself. It is small consolation to him to be informed that it might have been a simple matter had he been serving abroad at the time of conception or had been confined to hospital or in prison when the child was begotten ; and that because he happened at the material times to be living in the same neighbourhood, proof of non-access became a virtual impossibility.

The question postulated in this article is whether s. 7 of the Law Reform (Miscellaneous Provisions) Act, 1949, now offers an opportunity to such a defendant for redress. Subsection (1) enacts that notwithstanding any rule of law, the evidence of a husband or wife shall be admissible in *any proceedings* to prove that marital intercourse did or did not take place between them *during any period*. Subsection (2) merely deals with the non-compellability of the spouses and subs. (3) merely repeals s. 4 of the Adoption of Children Act, 1949, which had become superfluous in consequence of the enactment of s. 7 itself.

Thus the position is perfectly clear in applications for separation and maintenance orders arising after December 16, 1949. Where adultery is alleged as a defence to the wife's application, the husband is clearly in a position whereby he can attempt to establish such adultery by the birth of a child to the wife of which he denies paternity. No doubt justices will view such evidence with the greatest caution, especially in the class of case where there is no other supporting evidence of the wife's misconduct and will give grave consideration to the matter before virtually adjudging the child in question to be illegitimate, which would be the practical result at least of a decision against the wife ; but the fact remains that *Russell* v. *Russell* has disappeared from our case law and the justices have a clear mandate for receiving the husband's evidence. Whether the Divorce Division will ultimately decide when dealing with appeals from justices' orders that there should be some corroboration of the husband's evidence is doubtful.

But the matter does not rest there. It is submitted that nothing in s. 7 of the 1949 Act restricts the evidence of a husband or wife with regard to the paternity of a child born *at any time ;* and that the abolition of the rule in *Russell* v. *Russell* operates so as to admit of evidence now being given by a spouse in respect of a child born long before the passing of the Act. And assuming this contention to be correct, what of existing maintenance orders, where the husband has all along vehemently denied the paternity of his wife's child ? Can he now bring an application before the justices for variation or discharge of an order made, say, two or three years ago, on the ground of fresh evidence under s. 7 of the Summary Jurisdiction (Married Women) Act, 1895 ? It is submitted that he can.

The question of what is or is not " fresh evidence " has been the subject of many decisions. The Money Payments (Justices Procedure) Act, 1935, abolished the necessity for it in so far as the amount of weekly payments is concerned, but in all other respects it is still necessary under s. 7 of the Act of 1895 which enacts that upon cause being shown upon fresh evidence to the satisfaction of the court, the court may at any time alter, vary or discharge any such order. To quote from *Lieck and Morrison on Domestic Proceedings*, an application to vary or discharge must be supported by fresh evidence, which means such evidence as that upon which in the High Court a new trial would be granted. It must relate to something which has happened subsequently to the hearing or trial or to evidence which was not in the possession of the applicant at the time of the trial. It does not mean or include evidence which might have been called, but which for some reason or other was not so called. (*Johnson* v. *Johnson* (1900) 62 J.P. 72 ; *Weightman* v. *Weightman* (1906) 70 J.P. 120 ; *Groves* v. *Groves* (1906) 71 J.P. 167 ; *Cross* v. *Cross* (1931), 95 J.P. 86, and other cases). It must be of such a character that not merely is it relevant but of such importance that it would have affected the judgment of anyone if he had had the opportunity of hearing it at the original hearing. (*Copestake* v. *Copestake* (1926), 90 J.P. 191). The justices need not confine themselves to a change of circumstances since the order was made but should consider the whole of the facts. (*Thompson* v. *Thompson* (1934) 78 Sol.J. 820). Finally it has been held that the time limit under s. 11 of the Summary Jurisdiction Act, 1848, does not apply because of the words " at any time " appearing in s. 7 of the Act of 1895 (*Natborny* v. *Natborny* [1933] P. 1).

The result of the decisions on fresh evidence seems to be therefore that if the husband could have with diligence and

proper inquiry brought evidence at the original hearing but did not do so, he is out of court regarding such evidence at a later date on an application for variation or discharge ; but if such evidence were not available to him or he could not with diligence have adduced it at the original hearing, then an application is open to him.

This being so, it is contended that a husband previously suffering under the disability of the rule in *Russell* v. *Russell* fits perfectly into the latter category. The law prevented him at the original hearing from tendering his own evidence as to the paternity of the child. He may with the greatest possible diligence have adduced such evidence as lay at his command tending to prove his wife's adultery but the final proof which might have convinced the justices was not open to him. *Groves v. Groves, supra*, seems to show that in the case of a bigamous marriage, if it were the wife's bigamy and this came to the knowledge of the husband when it was too late to allege it at the hearing, evidence of it would be fresh evidence within the meaning of the section.

A fortiori it is submitted, the change in the law brought about by the Law Reform Act of 1949, admits of the husband's ability to give evidence himself of paternity being regarded as fresh evidence which the justices can now consider.

If the argument set out above is conceded, it is of course obvious, too, that the married woman who has previously failed to obtain an affiliation order against the father of her child solely because of the difficult question of non-access by the husband (although in other respects she was able to bring herself within the definition of a single woman under the Bastardy Acts) may now find herself in court because of the admissibility of her own evidence ; that is provided the actual father paid money within the twelve months after the birth of the child or for other reasons she is in time.

MOVABLE DWELLINGS AGAIN

Local authorities continue to be distracted, especially in rural districts and in others where there are appreciable areas of vacant land, by the problem of dealing with tents, vans, sheds, and similar structures, used for human habitation. Of this statutory congeries the van is perhaps the one which now gives most widespread trouble, though sheds and similar structures, including vans which have lost their mobility, have in some areas been a source of much anxiety. Parliament first recognized that there was a specific problem to be dealt with, in s. 9 of the Housing of the Working Classes Act, 1885. This applied the nuisance sections of the Public Health Act, 1875, and authorized the making of byelaws for securing what may broadly be called sanitary conditions in and arouftd these objects, and also the health of the inmates, so far as that presented a problem different from the similar problem in regard to the occupants of ordinary houses. These powers have been re-enacted with modifications (for which *see Lumley's* ample notes) in s. 268 of the Public Health Act, 1936, and were not found too inadequate until well on in the present century. The first world war gave a big impetus to the practice of living, for the whole or part of the year, in structures of these types, sometimes for recreation, often from necessity. The problem had meantime been complicated by the deplorable enactment of s. 27 of the Public Health Acts Amendment Act, 1907, and similar provisions in local Acts, and between the wars it began to be further complicated by other local Acts, aiming not so much at securing healthy conditions as at moving van dwellers on, out of the area of the local authority which promoted the local Act. In the main, the reason given to Parliament for enactments of this latter sort was usually summed up in the word "amenity," which can be made to cover a multitude of interferences with other people, especially people of the humbler sort. These local Act provisions were in a sense codified in s. 269 of the Public Health Act, 1936, which by subs. (8) extends the class called "vans" in the preceding section, by adding "other conveyances," and then described the whole as "movable dwellings," and in its substantive provisions proceeds on two main lines. It contemplates that sites shall not be regularly used for movable dwellings (that is, for tents, vans, other conveyances, sheds, and similar structures used for habitation) without a licence from the local authority, and that a person shall not place such a structure on a site not already licensed for longer than a certain period. There are various exceptions which need not here concern us, and the section contains provisions designed to be used for clearing out of the way provisions of local Acts in the same sense.

As we reminded readers at 113 J.P.N. 234, the section did not, like most of the Act of 1936, emanate from Lord Addington's Committee, which prepared the Bill for that Act and contained representatives of all the local government associations, as well as representatives of the Home Office and Ministry of Health, and outside persons with special knowledge of the law and practice of public health. It was put into the Bill at a stage later than the preparation of the committee's report (Cmd. 5059 of 1936, p. 119) ; we understand that in the form in which it eventually passed it was largely the work of the late Sir Frederick Liddell. He was at the time counsel to the Speaker, and so possessed unique knowledge of the statutory precedents and of the reasons by which those precedents had been supported, not merely in public argument before parliamentary committees, but, often, behind the scenes in discussions with him or with counsel to the Lord Chairman. The fact that notwithstanding this origin the section was seen from the first to contain many loopholes is an indication of the difficulty of drafting any enactment to deal with so elusive a topic. Some loopholes were unavoidable, because of the differences between local authorities themselves about the object they were seeking. Some were still thinking in terms of health ; others of "amenity" in the widest sense and some, at any rate, of what they thought to be morality. (This sounds fantastic, like the opinion put on record by one local authority in an appeal under s. 10 of the Town and Country Planning Act, 1932, that flat roofed houses are immoral, but we remember a local authority which did put forward this ground, and a member of Parliament who urged it constantly, as a reason for putting a stop to caravan dwellings.) Moreover until the decision in *Pilling* v. *Abergele U.D.C.* [1950] 1 All E.R. 76 ; 114 J.P. 69, it was arguable whether a local authority in dealing with an application for a licence under s. 269 could legitimately take amenity, etc., into their consideration, *i.e.*, any matters outside the general scope of the Act of 1936. The section does not say they must not ; reference to 113 J.P.N. 258 will show that we advised that they might lawfully do so, although at the time that article was written we had already suggested at 113 J.P.N. 7, and 233, that it would be wiser not to do so. The reason of our suggestion was that since 1936 Parliament had in the Town and Country

Planning (Interim Development) Act, 1943, and now in the Town and Country Planning Act, 1947, given more specific powers for amenity. The suggestion we made as a rule of practice was adopted by the High Court and turned into a rule of law in *Pilling* v. *Abergele U.D.C.*, *supra*. Other points which are left unanswered by s. 269 are whether a licence granted thereunder, for use of a site as distinct from use of a dwelling, can be limited in time; whether, if the local authority do not impose a time limit, they can revoke the licence; and whether, if they do impose a time limit, they can revoke the licence if circumstances change before the limit has been reached. We discussed these legal points at length at 113 J.P.N. 258, and we do not propose here to reiterate the arguments on either side. By courtesy of counsel engaged in the case we have however been furnished with a note of a further decision of the magistrates at Abergele where Mr. H. A. Hill, who had appeared for Mr. Pilling in the Divisional Court, again appeared for him upon appeal to the magistrates in respect of a fresh application, and argued successfully against the local authority that there was no power to impose a time limit. Mr. Pilling's courage, in twice risking his money to assert what he believes to be his rights, against a local authority with the rates behind them, is to be commended. If the High Court, like the magistrates at Abergele, when it gets the opportunity, accepts the arguments of Mr. Hill on Mr. Pilling's behalf in this second case, the point will be of particular importance in regard to "deemed" licences, that is those coming into existence by virtue of subs. (4) of s. 269, where a local authority do not within a given time either grant or refuse a licence for which application is made to them. The device of deeming that a local authority had said "yes," when the local authority had refused or neglected to say either "yes" or "no," was adopted by the legislature between the wars, in order to meet a case which had all too commonly arisen under the Public Health Act, 1875. Where plans were submitted to a local authority in accordance with that Act, for the laying out of a street or erection of a building, the local authority might feel that there was some objection to the building, but be advised that the objection was not one legally sustainable. It was by no means unknown for them in such a case to decline to adjudicate, thus leaving it to the builder to proceed without their approval of his plans. This he was, under the Act of 1875, as indeed he still is under the Public Health Act, 1936, perfectly entitled to do, but inasmuch as the local authority's refusal to adjudicate could not legitimate any part of his proposal which was in reality illegal, he proceeded at his peril. The same method commended itself to some local authorities still more, in regard to cases where they had a discretion whether to grant some licence or permission. Members might know that if they granted the licence they would be open to criticism from persons who disliked the proposal, whilst if they refused the licence they would be open to criticism from supporters of the proposal and, in many cases, exposed to the risk of an appeal to quarter sessions or at least to a court of summary jurisdiction. It was in an endeavour to get justice for an applicant to whom the local authority would not give a decision one way or the other, that this device of the deemed licence or permission was invented. The device was not applied to building plans, one of the matters which had originally raised the difficulty at which it was directed, other provisions being made for them in s. 64 of the Public Health Act, 1936. It occurs (for licences) in s. 269 of that Act, and had earlier been adopted in s. 10 (3) of the Town and Country Planning Act, 1932. In this last-mentioned context it was dramatically changed in the Town and Country Planning (Interim Development) Act, 1943, where s. 2 (3) neatly shows the process. The reason of the change was that it had in the meantime been noticed that property owners and their advisers were reluctant to act on deemed permissions in the planning field, because they did not feel sure where they stood—the uncertainty being all the greater after the unsatisfactory decision in *Harper* v. *Friern Barnet U.D.C.* (unreported: *see Lumley*, p. 1903) in 1937. In consequence, the Act of 1943 enacted, in relation to interim development under the Town and Country Planning Act, 1932, that where a local authority refused to adjudicate upon an application for interim development permission within a given time the permission should be deemed to have been refused. At first sight this might seem to put the developer in a worse position than he had been in under the Act of 1932, but he obtained, by this device, an immediate right of appeal to the Minister of Town and Country Planning, so that he would, after the delay incident to an appeal, know where he stood. In subsequent legislation the model of the Act of 1943 has in this respect been preferred to that of the Act of 1932, but the deemed licence under s. 269 (4) of the Public Health Act, 1936, was left untouched.

The next question which arises is in two parts: whether an applicant for a licence under that section upon whose application the local authority have not adjudicated, either of set purpose or through accidental effluxion of time, is to be deemed to have received a licence without time limit, and whether that deemed licence can be revoked by the local authority. To take the second part first, it would, to say the least, be extremely curious if a local authority, which by declining to adjudicate had brought the deemed licence into existence, could then make up its mind to adjudicate and revoke it. This might be grossly unfair to an applicant who, in all good faith and in reliance on the Act of Parliament, had begun to use his land for the purpose deemed to be licensed. The unfairness would be aggravated by the fact that, as was pointed out in our article at 113 J.P.N. 233, the Act of 1936, not having given any express power of revocation, naturally gave no appeal against revocation. (This in itself is one of the arguments for believing that there is no power to revoke a licence once given, whether deemed or expressed). The answer to the first part of the question we have just posed is quite plain: the licence deemed by s. 269 (4) to have been granted is that for which application was made. If the applicant asked for a licence for a period, he gets it. If he asked for a licence without suggesting a period, he gets an unlimited licence.

These various considerations, and the great revival of caravan dwelling since 1945, have led local authorities to think again about the danger of deemed licences. In a paper read to the summer conference of the Rural District Councils' Association, Mr. Chevallier, the clerk of the rural district council of Battle, in whose area there has been a good deal of trouble, suggested means for avoiding the coming into force of deemed licences under s. 269. This is not quite so simple as it looks, since an application may have come in at a time when it is difficult for the council and its committees to deal with it. It is not necessary in this article to discuss fully the method which Mr. Chevallier recommends; it can be found in the printed record of the Association's meetings. It will, however, be worth while to follow him in outline.

The first object is to ensure that the question, whether a licence deemed to have been granted holds good for ever and cannot be revoked, shall not arise in practice. This means taking care that every application is dealt with. This involves, first, careful administration so that applications are not accidentally delayed, and secondly a determination on the part of the local authority to do its duty by adjudicating, instead of taking the line of least resistance and giving no decision. In this connexion, we are glad to see that Mr. Chevallier advocates what is the practice of his own council, namely, to give reasons where they refuse an application. The section does not require this,

but it is a fair inference from the existence of a right of appeal, and the obligation placed on the council by s. 300 (3) of the Act to inform an unsuccessful applicant of his right to appeal. Such a right is of much less use than it ought to be, if the potential appellant does not know what will be the line to be taken against him at the appeal stage. It is now obligatory by s. 67 of the Public Health Act, 1936, for a local authority which rejects a building plan to indicate in what respect the plan fails to comply with the law : this was not always so and we remember, when Mr. Neville Chamberlain was the Minister of Health, a strong letter written by his direction to a local authority, stating that it was no more than common fairness to give reasons. A large part of Mr. Chevallier's paper is devoted to comparison of the powers given by s. 269 of the Act of 1936 on the one hand and the Town and Country Planning Act, 1947, on the other hand, with its subordinate legislation in the General Development Order. He indicates that some local authorities had hoped that the General Development Order or special local orders would be used to cut down the six weeks, for which a movable dwelling can under s. 269 (2) of the Act of 1936 be used without a licence, but that the Minister of Town and Country Planning has not felt justified in thus interfering with a decision reached by Parliament so recently as 1936, to the effect that six weeks unlicensed use was reasonable —a decision which, as will be gathered from what we have already said, followed a number of precedents in local Acts which had one after another run the gauntlet of examination by parliamentary committees. Another point of comparison between the two sets of powers is that under s. 269 there is an offence which can be prosecuted if the movable dwelling is left in position at the end of the sixth week. No fresh notice from the local authority is needed. Section 23 of the Town and Country Planning Act, 1947, can however only be brought into operation by an enforcement notice, so that the twenty-eight days during which land can be used for this as well as for other purposes without development permission is in practice likely to be extended and, for reasons which Mr. Chevallier sets out in detail, the extension may run up to some three months. All this indicates that the public health procedure, in spite of the adverse criticism levelled at s. 269, has merits from the point of view of a local authority which wishes to get rid of an existing movable dwelling or discourage movable dwellings in the future, but it is of course always subject to the limitation that it can only be used for purposes within the ambit of the Act of 1936 : we express ourselves thus, rather than speaking, as does Mr. Chevallier, of " reasons of a sanitary character," because we see no ground for supposing that prevention of the spread of fire may not be considered.

Accepting this limitation, we think that it might be worth while for a small committee of the legal officers of local authorities to go through the section line by line, and catalogue its difficulties, with a view to amending legislation when opportunity occurs. There is, for example, the doubt already spoken of at length, about the validity of a condition imposing a time limit where the section does not provide for it, and there is the related point about revocation of a licence. Whether it would be possible to evolve a section which would not be open to criticism we do not know, but local authorities who regard with aversion the spread of movable dwellings would like to see an attempt made. In any circumstances foreseeable between now and the next general election, a Government Bill is not to be expected but, if any time is available for private members in the first six months of 1951, a Bill to improve s. 269 of the Act of 1936 would do no harm. Alternatively, rural district councils are not without spokesmen and influence in the House of Lords, and such a Bill as we contemplate, having no financial implications, could be introduced into that House. For a Bill which has passed the Lords, and is not controversial, the Whips can usually find time in the Commons.

THE TRUST OF PUBLIC MONEYS

[CONTRIBUTED]

County councils and town councils (and metropolitan borough councils) are required by law to observe specific provisions when making payments, and also in the manner of receiving payments. Urban and rural district councils are not subject to the same statutory requirements, although in practice they model their procedure on the statutory provision applicable to county and municipal authorities.

To appreciate the position, the function of passing accounts for payment and the actual making of payments must be separated into the two distinct functions that in fact they are. By s. 184 of the Local Government Act, 1933, all payments into and out of the county fund must be made respectively to and by the county treasurer. Section 187 makes corresponding provision for municipal boroughs and the London Government Act, 1939, applies the same procedure to metropolitan boroughs. An order on treasurer to make payments from the respective county or borough funds must in each case be signed by three members of the council and countersigned by the county clerk or the town clerk as the case may be. Several payments may be and are almost invariably included in one order, and persons aggrieved by an order may appeal to the High Court.

No special provision with regard to the drawing of cheques is required by statute from local authorities other than from the county council. In the case of a county council, cheques on the county fund need to be countersigned by the clerk of the council or some other person appointed by the council.

The three members who sign the statutory order on treasurer perform a responsible act. If any illegal or otherwise wrongful " payments " are included, the members are liable to be held individually responsible for the payments made on the authority of the order. The signature may involve the member in as much liability for the illegal or wrongful payment as if he had been the mover of a resolution to make it. The members are in the unfortunate position of being liable to be singled out from other members, *e.g.*, to bear a surcharge following disallowance of a wrongful payment by a district auditor.

They cannot legally require any contribution from their fellow members, for the law would not permit indemnity in such a matter. The fact, therefore, that the remainder of the council were behind the members who signed would be in this regard immaterial. In such cases, where to require a particular member to bear a surcharge would be against public policy, s. 230 of the Local Government Act, 1933, provides (in cases outside London) that the member surcharged may apply to the High Court or to the Minister of Health for a declaration that in relation to the subject matter of the surcharge he acted reasonably or in the belief that his action was authorized by law.

If such a declaration be made, personal liability in respect of the surcharge can be removed.

This would happen only in few cases. In *Re Magrath* [1934] 2 K.B. 415 C.A., Scrutton, L.J., said : "... If surcharges are to be effective as deterrents for the future, they should be enforced ... The district auditor does not deny that the persons surcharged were acting in the belief that their action was authorized by law, but says very reasonably that, unless they are surcharged, the only effect will be to throw on the ratepayers an unreasonable payment contrary to law." In any event, the surcharged members are left to bear legal costs incurred out of their own pocket. In the case of surcharges of large amounts of money (£500 or more) questions of disqualification for membership arise.

The above does not only apply to those members who sign the statutory orders on treasurer where such are made obligatory. The law of surcharge by a district auditor is not confined to them. A member of an urban or rural district council who, for example, signed a list of payments passed by the council, upon which cheques were made out, might be just as liable. Also members signing cheques might be similarly liable for surcharge, as the auditor will not look further than he must in seeking someone upon whom to surcharge a disallowed payment. Surcharge does not arise only when wrongful payment *is* made. It can arise when items are not paid to the rate fund. But payments out are more varied and the responsibility of members who perform such acts of signing is substantial. They incur responsibility in cases of fraud or illegality. They also incur responsibility in cases of inadvertent wrongful payment although no fraud, etc., may be present. Although the responsibility is one which they ought not to be called upon to bear too heavily, it is one from which they cannot withdraw themselves completely because the responsibility is inherent in the office of member.

The statutory order on treasurer involves the treasurer in a responsibility which the joint stock (clearing house) banks decided last year that they were not prepared to carry out. In fact, they went further and said that they were not prepared to act as treasurers to an urban or rural district council if they were required in that office to carry out similar responsibilities on behalf of their customers and that in all cases of local authorities' moneys the relationship which they were prepared to adopt was that of banker and customer only, so that the safeguard against wrongful debits would rest in the cheque alone.

This meant the end of the cheque list system, by which a copy of the list of cheques was sent to bankers, who were required to satisfy themselves that cheques presented for payment were in the list by comparing the particulars on the cheque with the items on the list. This system had been widely adopted by all kinds of local authorities.

As well as the responsibility of the council or of individual members is the position of the officials, who have their own responsibilities, especially the treasurer. In the case of county councils and borough councils, since the clearing banks withdrew from the list check, the bank is no longer in a position to be treasurer. In parenthesis, for many years most of the larger authorities have had treasurers independent from the banker, and many of the smaller authorities have followed suit, although so long as an urban or rural district council did not want the bank to operate the cheque list, there was from their point of view no impelling reason for the change. The fact that the office of town clerk (or clerk) and treasurer cannot be held by the same official dictated, from that point of view, in the case of the smallest authorities which only needed few officials, a balance of convenience in the bank's remaining treasurer where the clerk was also the accountant.

Municipal borough treasurers are often considered to have a peculiar position at law : the case of *A.G.* v. *De Winton* (1906) 70 J.P. 368, was an action by a burgess and councillor of the borough of Tenby against the borough treasurer. The case shows that at that time Tenby had "exhausted its borrowing powers" and the case was concerned with certain interest on an overdraft, then standing at £5,975. The borough treasurer had charged in his accounts as treasurer interest on the overdraft. The interest had been charged by the bank on the overdraft and the treasurer had credited himself and debited the borough. No order on treasurer had been made and the question was as to the legality of the payment (which would have amounted to an increase of borrowing notwithstanding the previous exhaustion of the borrowing powers), and the court, in holding that the treasurer was not entitled to do as he had done in his account, held accordingly that any such payment by the council would be illegal.

Farwell, J., after observing that the moneys in the borough fund were trust moneys, said : "The defendant cannot escape by pleading the wrongful orders of his employers ... the treasurer is not a mere servant of the council ; he owes a duty and stands in a fiduciary relation to the burgesses as a body ; he is the treasurer of the borough." Although the special position in boroughs was thus specifically appreciated, *viz.*, that the borough treasurer (as is the town clerk and other chief officials at least) is the servant of the mayor, aldermen and burgesses, and not of the town council, the *De Winton* case applied an earlier case of *R.* v. *Saunders* (1854) 18 J.P. 584. In that case Erle, J., said : "If an order is made on a county treasurer to pay expenses wholly disconnected with county matters and such an order is without jurisdiction, and one which the treasurer would be bound to disobey, and if the treasurer did pay it, it would be the duty of quarter sessions not to allow the item ... in the treasurer's account."

Some borough treasurers read *De Winton* so literally as to hold that the responsibility of a borough treasurer includes the actual custody of the borough fund, and that the bankers of the moneys are the treasurer's bankers. However this may be, the council's responsibilities are not likely to be any the less, and, in particular, the personal liability of members who sign cheques would continue.

An illegal payment by a local authority is a quasi-crime, a wrongful performance of a public trust and duty, though whether indictment would lie against a local authority is open to doubt, certainly on practical grounds. An action for injunction, *e.g.*, as in *De Winton*, is obviously the more practical remedy and more immediate, though its very availability suggests that indictment might lie.

The proposition that no treasurer can plead the instructions of his local authority as a defence to personal liability seems to follow from the above, and that, in proper cases, proceedings by injunction (at least) lie against all treasurers, even against a bank if it be treasurer. *De Winton*, in applying *R.* v. *Saunders*, showed that no distinction was in this regard to be made between county and borough treasurer. And, although *De Winton* described the borough treasurer as the servant of the burgesses, the principle seems the same for treasurers for all kinds of local authorities. The clearing house banks seem satisfied that they have no liability as treasurer beyond the relationship of banker and customer. But any bank which holds the public office of treasurer is in no better position than any other treasurer and cannot escape the liability for making a payment *ultra vires* the local authority. The fact that the cheque which makes the payment is "good" on the face of it is a matter between banker and customer, not as between treasurer and local authority. The fact that the moneys which the treasurer-bank

holds are public trust moneys is also irrelevant in this regard—the bank holds the moneys, but the liability for illegal payment is on the treasurer as an officer, not of the bank but of the local authority. A bank treasurer therefore seems to be as liable as an individual not a banker, in the case of an *ultra vires* payment.

The position of any other official, *e.g.*, town clerk or clerk, who signs cheques (other than as counter signatory), is much the same. Any signing official seems liable equally with the signing members, *e.g.*, to surcharge, in that a district auditor could take his considered choice from among them. In a proper case, where the auditor deems the course to be the right one, member and official might be both surcharged in respect of the one item. This was done, *e.g.*, in the unreported case of *re Hurle-Hobbs, ex Parte Riley and Another* (the official had a duty to disclose information but did not do so, with the result that interest was paid under an agreement entered into by the local authority as a result of the negligence and misconduct of the official and a member who "drove his scheme through)."

But an action for an injunction against a treasurer is obviously a proceeding out of the ordinary. More usually such an action would be against the local authority. The above does show, however, that the position of any treasurer is the same, save for one qualification. All treasurers are statutory appointments in that all counties, boroughs, urban and rural districts must have a treasurer appointed by the council. Certain duties are put upon county and borough treasurers by statute, but in most cases similar duties are put upon treasurers of urban and rural districts by their councils. The qualification necessary, therefore, is that in the case of urban and rural districts the personal liability of treasurers is determined by an examination of their terms of employment.

The statutory requirements as to order on treasurer and the method of signing cheques in the counties are designed to avoid fraud, as well as to check the *ultra vires* payment. The ease with which fraud may facilitate *ultra vires* payment is obvious, and every local authority needs a good system. Even so, the statutory requirements are not perhaps the best. County councils, to take their example, meet quarterly in most cases, and have very many payments to make. The difficulties which arise are in many cases got over by using the order on treasurer to transfer sums to subsidiary accounts, *e.g.*, the education account, to which it is assumed that the statutory requirements do not apply. Cheques on the county fund transferring amounts to these subsidiary accounts are signed by the chairman or other member, and countersigned by the county clerk. Payments from the subsidiary accounts, which total very many and include practically all payments to creditors, etc., are dealt with by committees passing lists of payments and cheques being signed (perhaps only rubber stamped and initialled) by the treasurer. Urban and rural district councils to which the statutory provision for order on treasurer does not apply, adopt the analogous list of payments system. In many places, members still sign cheques, and where the number of payments is not many members' signature of cheques is sound administration, even though not absolutely necessary.

Members who do sign cheques accept a responsibility more than merely signing cheques which appear on the face of them to be in order. The signing members should satisfy themselves that the payee and the amount are as in the order on treasurer or in the list of items passed for payment. Any signature of town clerk or clerk is more of a counter signature to the effect that the cheque has been duly signed by the members. Moreover, if the members sign carelessly and a fraud occurs, the fidelity guarantee insurance of the official responsible might be prejudiced.

The practice as to the signing of cheques is partly dictated by size of authority. With the larger authorities, the writing of a cheque can be operationally separated and given to a number of separate departments, each department exercising a check on another, so that the need for any signature at all is because the resulting document is a cheque within the meaning of the Bills of Exchange Act, 1882. In the case of the smaller authorities, the writing of a cheque is one operation in one department.

In cases where cheques are to be signed by an official or officials alone, the Ministry of Health have suggested that the order on treasurer (or its equivalent, the list of items passed for payment) should be prepared in duplicate and a copy kept by the town clerk or clerk as a separate council record. This practice would mean, *e.g.*, that any subsequent alteration in the order or list would need to be carried through to the clerk's copy if it were to be used as the basis of any altered payment. Other means might be devised, many of them furnishing the basis for accountancy, perhaps of the cash book. As to the writing of the cheques, in some cases the function might be operationally divided between the clerk's and treasurer's departments, the treasurer being the sole signatory. A more practical way for the medium sized authority is for cheques to be written in the treasurer's office and signed by the treasurer and countersigned by the clerk. (The clerk would compare the cheques with the items on the copy of the order or list in his custody).

Where officials only sign cheques, a further safeguard where cheque writing cannot be adequately divided operationally between separate departments is to maintain a subsidiary account by cheques of some other form of bank-transfer equal in amount to the total of the orders on treasurer (or the lists). Such a subsidiary account is not analogous to the county funds to which reference has been made. "Out of meeting" payments, *i.e.*, items which must be paid before the next meeting, would be paid by cheque on the general rate fund account, such a cheque to be subject to the same formalities as in the case of the cheque transferring moneys to the subsidiary account, perhaps, *e.g.*, signed by three members countersigned by the town clerk (or clerk).

The responsibility of any local authority of any kind includes the avoidance not only of *ultra vires* payment but also of fraudulent payment, though the latter, when it arises at all, which is fortunately only seldom in this country, does not directly lead to surcharge on individual members—it is rather a political burden, so far as it is a burden at all, of the whole council, or, where the council is run on party lines, of the party in control. The ways of discharging this responsibility must vary according to the size of the authority, but the principles are the same for all; one is accepted as not reposing in any one person sole control of public funds so far as that can be avoided, and, another, the avoidance of opportunity for collusion wherever possible. To most members this is a distasteful business and they tend to shrink from it, but the law requires that trustees execute their trust with fidelity and with reasonable diligence. The treasurer may have his degree of personal responsibility, but that does not minimize the responsibility of the local authority.

"EPHESUS."

NEW COMMISSIONS

FOLKESTONE BOROUGH

Walter Ernest Austin, 55, Sandgate High Street, Folkestone.
Francis James Baden Fuller, Sunborne, The Riviera, Sandgate.
Leonard Offer, One, Cherry Garden Lane, Folkestone.

MISCELLANEOUS INFORMATION

EPITOMES OF ACCOUNTS ALTERED FOR 1949-50

The " more general review of the lay-out " of the forms of epitomes of accounts of local authorities, which was promised by the Ministry of Health when sending out forms for 1948-49, has resulted in various changes in the forms in respect of the financial year 1949-50, which reached councils of counties, county boroughs and county districts during August, 1950. Information of income and expenditure in these returns is required under the Local Government Act, 1933, Part XI, and is subsequently summarized in the annual local government financial statistics.

An innovation common to the returns of all the authorities just mentioned relates to the amount of salaries and wages of officers and servants to be shown in a note at the end of the form. In their circular covering forms in respect of 1949-50, the Ministry state that the absence of information on salaries and wages paid to employees creates a noticeable gap in the official statistics of local government finance ; hence the request. Doubtless, the information thus obtained, probably showing that salaries and wages paid in the provision of services are in the region of one-half of total revenue expenditure, will be interesting, and may be useful in making comparisons between authorities, perhaps giving some indication whether large or small administrative units tend to require relatively more or less expenditure on staffs, and reflecting differing conceptions of staff gradings appropriate to analogous responsibilities.

Other alterations include a new table to record capital balances and their changes from year to year in a consolidated loans fund or loans pool ; omission of a separate statement of Government grants and reimbursements (already substantially covered in other ways) ; and a new head for civil defence, merging previous " emergency residual services " and those under the Civil Defence Act, 1948. Difficulties which have arisen in the avoidance of double reckonings in national statistics as regards debt or loan charges in respect of services transferred from councils of county districts and to councils of counties have led to revised procedure under which both the transferor authority and the transferee will record all, instead of some, of their transactions in their epitome forms, duplication in the national summary being avoided by selective elimination in the Ministry of Health.

CORONATION CUP

An interesting piece of plate which was on view in the recent display of City Plate at Oxford, was the original Coronation Cup of King Charles I.

It was presented by Charles II to the Mayor of Oxford of that time when the King appointed him assistant butler at any Coronation—a privilege which the Mayors of Oxford could still claim if they took the cup with them.

REVISION OF CREMATION REGULATIONS

An increase from less than 2,000 cremations in England and Scotland in the year 1920 to nearly 80,000 in 1949, and applications from local authorities for approval of more than one hundred new crematoria at present before the Ministry of Health, are indications of need to review existing regulations which are substantially those proposed by a Departmental Committee in 1903. Various modifications are recommended by an interdepartmental committee (Cremation Committee, report Cmd. 8009) who reported to the Home Secretary in July, 1950.

Among recommendations of the recent committee, a new form of certificate would be instituted to serve the dual purpose of confirming (as in present Form C) the cause of death given on Form B and authorizing cremation (obviating the necessity for present Form F). " Clearly recognized status " of the medical man giving the new certificate would be achieved, the committee thought, by placing primary responsibility on the medical officer of health of the county or county borough where the death occurs ; it was anticipated that in counties there would be power to delegate in appropriate cases to medical officers of health of county districts. A consideration which influenced this suggestion was that thirty-seven of the fifty-eight existing crematoria are owned by local authorities, by whom the medical officer of health is appointed, and all of the projected hundred or more additional crematoria would be similarly owned by local authorities.

The medical officer of health should, the committee suggest, be assisted by a panel of medical practitioners, chosen by the local authority in accordance with rules to be made by the Secretary of State. The task of certification would normally fall on these practitioners ; and the undertaker arranging for cremation in a particular case would ask the public health department for the name of the medical man whom he should approach for the purpose of securing the second certificate. In any case of death in a hospital which is not referable to the coroner, the medical superintendent or his deputy would give the combined confirmatory certificate and authority to cremate.

Evidence that some medical referees order post-mortems too freely, causing considerable expense and distress to relatives, was partly responsible for a recommendation which would tend to limit these examinations to cases regarded with suspicion by a coroner ; where a coroner was satisfied that an inquest or post-mortem of the body was unnecessary he would have power to authorize the cremation to take place. Extension of circumstances in which a coroner may give a certificate in Form E without waiting for the termination of an inquest would include every case of accidental death, instead of specified classes. In Part VI of their report, the committee discuss what they regard as unnecessary delay in cremation arising from existing procedure in connexion with registering the death and, subject to adoption of recommendations in other parts of their report, would place the duty of instructing the cremation to proceed on the crematorium registrar, and would make it an offence under the regulations for the crematorium registrar to give those instructions before he has received the proper documents and is satisfied that they are in order.

MAYOR'S COURTS

Few of the once familiar " Mayor's Courts " are still in existence in Local Government affairs today, although some still survive to remind us of a former active system.

Most Corporations have had one of these courts of civil jurisdiction, corresponding to the medieval Court Baron. The chief magistrates of the borough were always members. Process—the measures by which parties to suits were made to appear before the court—was generally issued by the Mayor and carried out by the Sergeant at Mace or some such official.

These courts, which seem to have been most active in the seventeenth century, began to decay in the eighteenth century.

The Mayor's Court at Oxford, one of these local courts of jurisdiction, has, as far as can be discovered, never been abolished and was considered to be still in use as late as in 1909. Actually the last time any plaint was entered before the Court was five years earlier than this date and then the plaint was withdrawn.

The right to hold the Court in Oxford was granted by a Charter of James I on July 29, 1605, although this Charter merely confirmed a right which the Corporation already held by immemorial custom. In the Oxford City Almanac for 1853 the Mayor's Court, together with the Hustings Court are mentioned in a list of " Committees of the City Council," the Hustings Court being associated with the Mayor's Court and the right to hold it confirmed by the same Charter of James I. This court had a wider jurisdiction than the Mayor's, the latter being concerned solely with " personal " actions while the former could hear " real " and " mixed " actions as well as personal ones.

The Almanac says that the Mayor's Court met every Friday and the Hustings Court on the first Monday of each month, and adds, " At these courts, persons who are eligible may obtain their freedom " (presumably referring to those who wished to be admitted as Freemen of the City). In the seventeenth century, perhaps later as well, this court was known as " Friday's Court." Members of Oxford University were exempt from the jurisidiction of the Court.

The following extract from the Oxford Council Acts for March, 1676, is interesting : " The Mace-bearer complains that the sergeants do not justly account to him, as they ought, for his fees on the arrests in Friday's Court, or that when they do account they do it with such regret and in such unreasonable manner that it is rather a vexation than a profit to the Mace-bearer.

" It is agreed that the three sergeants shall, at their peril, weekly every Friday morning at the Court, render a true and just account to the Mace-bearer by annote under their hands of all arrests made in Friday's Court since the last court preceding, and on such account make present and true payment for all such fees as are due to the Mace-bearer with due respect."

NOTICE

Mr. M. F. G. Gibbs, F.R.I.C.S., F.A.I., will read a paper on the work of a licensed property valuer to members of the Chartered Auctioneers' and Estate Agents' Institute at 29, Lincoln's Inn Fields, London, W.C.2., on Thursday, October 5, 1950, at 6 *p.m.*

CORRESPONDENCE

[The Editor of the *Justice of the Peace and Local Government Review* invites correspondence on any subject dealt with in its columns, for example, magisterial matters, probation, local government, etc.]

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

PROBATION PROBLEMS

In the short article at p. 499, has not your contributor, in the last sentence of the third paragraph, gone wrong about s. 5 (4) of the Criminal Justice Act, 1948? To speak of being sentenced for breach of a probation order is not how I should myself describe the imposing of a fine, or making of an order requiring attendance at an attendance centre, under the first enactment in s. 6 (3), but perhaps this is no more than a verbal doubt, about the appropriateness of the word "sentence." What is important is that where that first enactment is used the probation order does not, as your contributor states, cease to have effect. The power of the court is expressly given "without prejudice to the continuance of the probation order." It is only when one of the further powers lettered (*a*) and (*b*) in s. 6 (3) is used that s. 5 (4) comes into play, and, where (*a*) or (*b*) is used, the probationer is not sentenced for breach of the probation order, but for the original offence. Again, to say that, where a probationer is sentenced for the commission of a further offence, the probation order ceases to have effect, is to say what is not said by s. 5 (4), and to imply that the result is automatic. In truth, this result, from the probationer's being convicted of and sentenced for a further offence, only follows if the procedure of s. 8 is gone through. That procedure is elaborate, and in each subsection the enactment is that the court "may" do something. It is only when that something has been done, that the probation order ceases to have effect by virtue of s. 5 (4). This is by no means a distinction without a difference, and your learned contributor's ignoring of the distinction seems likely to mislead.

Yours faithfully,

N. R. TEMPLE.

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

OUR LAY MAGISTRACY

Your admirable review of the eighth edition, by Mr. James Whiteside, of *Hayward & Wright's Office of Magistrate* in your issue of September 9, will have given very pleasant reading to many. For it speaks so well of our lay magistracy of today.

I would, however, put in a word of praise for those of earlier days. May I instance but two lay magistrates, just to show with what earnestness they sought to equip themselves with the necessary knowledge.

The first was a Labour man, appointed when the Labour Party first came into power. He was the only other occupant of my carriage one evening, when I was returning to town from Lewes Quarter Sessions. Seeing my red bag on the carriage rack, and rightly thence assuming me to be a member of the Bar, he sought my opinion on an adjourned case being tried before him and two other magistrates from whom he had differed. He had persuaded them to adjourn the case in order that he might seek legal advice. On his stating the facts, I was happily able correctly to advise him as to the law applicable, with a consequently correct decision of the case, as later he was good enough to inform me. But my point is this: that this magistrate told me he was so impressed with the honour received by him in and by his appointment that he made a point of constant reading of *Stone's Justices' Manual*, the better to equip himself for the performance of his duty.

The other was the case of a lady magistrate—a friend of my own—who, with no previous knowledge of the law, yet did her utmost to equip herself for her duty; and often in the course of a case before the court would she ring up either myself or another friend at the Bar—whichever might at the time be available—for advice as to the court's proper course.

I do not for a moment believe these to have been isolated instances; and I, for one, with experience extending back for over 50 years, would like to record that I have throughout held the lay magistracy of England in the highest esteem. Nor need one cease to be a *Laudator Temporis Acti* because one is also a *Laudator Temporis Præsentis*.

I am, Sir,
Yours faithfully,

L. G. H. HORTON-SMITH.

4, Paper Buildings,
Temple, E.C.4.

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

EXPENSES OF JUSTICES

In these days magistrates are very properly drawn from all sections of the community, and we are urged to train ourselves so that we can perform our duties efficiently. We are further urged to visit prisons, remand homes, approved schools and other similar institutions. In an urban district this may not entail any serious sacrifice, but in a county, the long and frequent journeys entail considerable expenditure, which few of us are in a position to afford.

So far, since January 1, I have travelled over 550 miles upon official journeys, and I am due shortly to attend a conference in London which will necessitate the payment of a railway fare of £2 7*s.* 8*d.* and incurring the expense of at least two nights' hotel accommodation.

Parliament, in its wisdom, ordained as long ago as December of last year, that it was wrong to expect justices, in these days of financial stringency, to be so heavily penalized for carrying out the duties for which they rightly receive no payment, but so far no attempt has been made to implement that decision.

A return journey of some sixty miles undertaken at one's own expense, must prove a deterrent to those of us who otherwise would attend lectures and conferences, quarter sessions and assizes, and inspect penal and other institutions within our jurisdiction, which we are so frequently urged to do.

If the views I have expressed are unreasonable doubtless the appropriate public relations officer will avail himself of the courtesy of your columns to point out my error.

Yours faithfully,

A. LAWSON-WALTON.

The Dial House,
Budleigh Salterton,
Devonshire.

THE WEEK IN PARLIAMENT

COURTS-MARTIAL APPEALS

At question time in the House of Commons, Wing-Commander N. J. Hulbert (Stockport N.) asked the Minister of Defence whether he could make a statement in regard to his proposals for review of the courts-martial procedure.

The Minister of Defence, Mr. E. Shinwell, replied that the recommendations of the Lewis Committee on Army and Air Force Courts-Martial and the Pilcher Committee on Naval Courts-Martial, which conflicted in some respects and raised a number of important and complicated issues, had now been considered by the Government. The Government had agreed in principle that a courts-martial Appeal Court should be established for all three Services, and that the necessary legislation for that purpose should be prepared, with a view to the introduction of a Bill next Session. That was in hand, but a good many details still remained to be settled. A fuller statement would be made in due course and that would cover many of the subsidiary recommendations of the Committees which depended, directly or indirectly, on the exact constitution and powers of the Appeal Court. Certain other recommendations of the Committees affecting courts-martial procedure were still under consideration.

THE ADJOURNMENT

Parliament has now again adjourned until October 17.

PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF LORDS

Monday, September 18

NATIONAL SERVICE BILL, read 1a, 2a, and 3a.

LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS

No. 63.

A RUNAWAY PLANE AND THE SEQUEL

There appeared before justices of Elham petty sessional division sitting at Hythe, Kent, on August 3, 1950, a twenty-six year old glider pilot and a pilot of powered aircraft.

The glider pilot was charged, first, with contravening the provisions of art. 18 (1) of the Air Navigation Order, 1949, in that he, on a stated date, had attempted to fly as a member of the operating crew of an aircraft when he was not the holder of a licence granted or rendered valid under the said order, that is to say, attempted to fly as the pilot of the said aircraft. A second charge alleged that he had operated an aircraft in a negligent manner so as to endanger life and property contrary to the provisions of art. 44 of the said order as extended by r. 10 of sch. 2 of the said order.

The second defendant was charged with aiding and abetting the commission of the first offence referred to above.

For the prosecution, it was stated that a firm of glider manufacturers at Newbury wished to deliver gliders they had sold to the Danish Air Force and the second defendant, a qualified pilot, was employed to take charge of the delivery flights. Each glider was to be towed by aircraft across the channel and the first defendant, a glider pilot and an experienced instructor who, however, held no licence for powered aircraft was to be in charge of the glider.

The defendants reported at Lympne Airport and the second defendant, who was to have flown the aircraft, took a seat in the glider and strapped himself in. The first defendant with no aid went to start the powered aircraft. No one was in the cockpit and he had left the throttle wide open. The engine caught and the aircraft began to move because there were no chocks under the wheels. The only thing he could do was to catch hold of one of the wings and the aircraft swung around in ever-increasing circles, and finally crashed with the glider into a nearby hedge.

Both defendants pleaded guilty. The first defendant was fined £5 upon the first charge and £10 upon the second charge and ordered to pay 19*s.* 6*d.* costs. The second defendant was fined £5.

COMMENT

Article 18 of the order provides that no person shall fly as a member of the operating crew of an aircraft registered in the United Kingdom unless he is the holder of a licence granted or rendered valid under the order.

Article 20 specifies the types of licences which may be granted by the Minister for the purpose of entitling persons to act as members of the operating crew of an aircraft.

Article 44 provides for due compliance with the rules of the Air and Air Traffic Control as laid down in sch. 2 to the order and r. 10 provides that an aircraft shall not be operated in a negligent manner or in a reckless manner so as to endanger life or property.

Article 65 specifies the penalties which may be imposed upon breach of any of the articles of the order and the charges referred to above each carried a maximum of six months' imprisonment and a fine of £200.

(The writer is indebted to Mr. J. E. Chapple, Clerk to the Justices, Hythe, for information in regard to this case.) R.L.H.

No. 64.

TWO ANGRY MINERS

Two miners appeared at Sunderland Magistrates' Court on August 16, 1950, charged with behaving in a violent manner in a coal mine contrary to reg. 27 of the General Regulations made under the Coal Mines Act, 1911.

For the prosecution, it was stated that in the early hours of the morning of July 10 at the commencement of a shift, a number of putters, including the two defendants, were put to work by an examiner. An argument took place between the defendants as to where they were to work and a fight ensued. The men were separated but after a few minutes they were fighting again. Each blamed the other for causing the trouble.

The chairman, in announcing that each defendant would have to pay a fine of £5, stressed that discipline must be of primary importance in a mine and that frayed tempers were no excuse for assault.

COMMENT

Section 86 (1) of the Act of 1911 gives the Secretary of State power by order to make general regulations for the conduct and guidance of persons employed in or about mines "as may appear best calculated to . . . provide for the safety, health, convenience and proper discipline in or about mines," and s. 90 provides that any person failing to comply with the regulations shall be guilty of an offence against the Act.

Section 101 (3) of the Act enacts that offences under the Act for which a penalty is not expressly provided shall be punishable with a fine of £5 or, if the defendant is the owner, agent, manager or undermanager, £20, and subs. 4 of the section provides that if, in the opinion of the court, the offence committed is one which is likely to endanger the safety of persons employed in the mine and such offence was committed wilfully by the person accused, the court may, if it is of the opinion that a fine will not meet the circumstances of the case, impose a maximum of three months' imprisonment.

(The writer is very much indebted to Mr. J. P. Wilson, Clerk to the Justices, County Borough of Sunderland and to the Deputy Clerk, Mr. A. Brenchley, for information in regard to this case.) R.L.H.

No. 65.

NEGLECT CAUSED ELECTROCUTION OF AN EMPLOYEE

A Gas Board appeared before the Stockport County Borough justices in August last on the information of one of H.M.'s Factory Inspectors charged with a contravention of reg. 2 of the Electricity (Factories Act) Special Regulations of 1908 and 1944 in that certain conductors, to wit, the electrodes and filament of an electric lamp were neither covered with insulating material and further efficiently protected where necessary to prevent danger nor so placed and safeguarded as to prevent danger so far as was reasonably practicable.

For the prosecution, it was stated that two employees of the Board used a lamp holder with an unprotected bulb, instead of the guarded inspection lamp which should have been used, when hosing down the interior of a gas boiler. One of the men inside the boiler was electrocuted and the glass of the bulb was found broken. The men concerned were unskilled and no foreman or other competent supervisor was present, the accident taking place on a Sunday. Guarded inspection lamps were said to be available but for some reason were not issued to the men concerned. A fine of £40 was imposed.

COMMENT

Section 60, Factories Act, 1937, as amended by s. 12, Factories Act, 1948, gives power for the Secretary of State to make special regulations for the safety and health of persons employed in factories wherein he is satisfied there is a risk of bodily injury on account either of the nature of the work carried on or machinery used.

Regulation 2 of the Special Regulations of 1908 provides that all conductors shall either be covered with insulating material and further efficiently protected where necessary to prevent danger, or they shall be so placed and safeguarded as to prevent danger so far as is reasonably practicable.

Section 133 of the Act provides that if any person is killed or dies or suffers any bodily injury in consequence of any contravention of any regulation made under the Act the owner or occupier of the factory shall, without prejudice to any other penalty, be liable to a fine not exceeding £100 which, subject to the provisions of s. 5 of the Criminal Justice Administration Act, 1914, may be applied in whole or in part for the benefit of the injured person or his family as the Secretary of State determines.

(The writer is indebted to Mr. J. Lloyd, Clerk to the Stockport County Borough Justices, for information in regard to this case.) R.L.H.

PENALTIES

Staple Hill—August, 1950—causing unnecessary suffering to a cat by shooting at it—fined £5. To pay £6 16*s.* 6*d.* costs. Defendant, a licensee, shot a cat when it came on his land and wounded it in the rear legs. The cat was later destroyed.

Norwich—August, 1950—obtaining clothing valued at £5, by false pretences—two months' imprisonment. Defendant, a man of thirty-two unemployed and of no fixed address, stated that he was short of clothing at the time that he committed the offence. Defendant had very recently been sentenced to four months' imprisonment for another offence; part of this sentence remained outstanding.

Oxford—August, 1950—failing to ensure the safety of bus passengers—fined 15*s.* To pay 15*s.* costs. Defendant, a bus conductor, rang the bell when a passenger who wished to alight had reached the top of the stairs. The passenger fell from the top floor to the third stair.

Port Talbot—August, 1950—stealing money from a bus company—three charges—fined a total of £10 10*s.*

Port Talbot—August, 1950—receiving the above money—three charges—fined a total of £10 10*s.* First defendant, a married woman aged thirty-eight acting as bus conductress, took bus passengers' fares without issuing tickets and then handed the money to the second defendant, a thirty-eight year old bus driver.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Contract—*Library — Recovery of unreturned library book — Detinue.*

I read with much interest your reply to P.P.2 at p. 188, in which you stated that you did not see how an action for recovery of the books could succeed. I am puzzled by this statement, since I am aware of several such claims which have in fact succeeded, the actions being framed in detinue. As I understand it, the title to a book borrowed from any lending library remains at all times in the library authorities and, if the borrower fails to return the book within the time allowed him for reading it, these authorities can bring an action against him for return of the book or its value. I should be very much obliged, therefore, if you would indicate your reasons for taking the view expressed in your reply referred to above. I shall not be surprised to find that I have overlooked some point in my reasoning.

A. GEORGE.

Answer.

What you have overooked is that in P.P. 2 at p. 188 the library books had been obtained by an undiscovered X, believed to have wrongfully used the ticket issued to A, and that the querist asked in terms whether an action could be maintained against A. Since the books were not and (so far as was shown) never had been in A's hands, neither detinue nor trover would lie against A. If X had been known, conversion (trover or detinue) would have been appropriate against him, but even so the claim would have been for return of the books or payment of their value: indeed, the present query says so. It is true that under O. 48, r. 1, the High Court can order specific restoration of a chattel, not merely (as was previously the law) damages on payment of which the chattel vests in the defendant: *Brinsmead* v. *Harrison* (1872) 27 L.T. 99. The county court has similar power under s. 40 of the County Courts Act, 1934: *Winfield* v. *Boothroyd* (1886) 54 L.T. 574. But O. 48 r. 1 is far from easy to work, as will be seen from the Annual Practice, and specific restoration with no option to pay damages is appropriate only to rare or irreplaceable chattels, not to books such as are made available to borrowers generally in public libraries: *Whiteley* v. *Hilt* (1918) 119 L.T. 632; *Cohen* v. *Roche* (1927) 136 L.T. 219. In our previous answer we were, however, not concerned with this point, because against A, who was known whereas X was not, the only basis of action was for damages for breach of the contract in regard to use of the ticket, *i.e.*, it could not be an action "for recovery of the books."

2.—Criminal Law—*Unauthorized collection of kitchen waste while on private premises—Larceny.*

This authority are a "directed authority" under the Kitchen Waste (Licensing of Private Collectors) (Consolidation and Extension) Order, 1944: S.R. & O. 1944, No. 142, in respect of the collection of kitchen waste. The method of collection adopted on some corporation estates is to provide householders with small kitchen waste containers, which are placed at the rear of the houses concerned. The containers remain the property of the corporation and are emptied twice weekly by them. The householders are not paid for the waste food collected. For some time it has been thought that outside collectors were visiting certain of the houses and emptying the corporation containers, and, recently, a man was discovered actually emptying containers. When challenged he said that he was doing so with the consent of the householder and this appeared to be the case. It seems that no offence has been committed by the collector concerned under the order, which permits a person to collect waste for consumption by his own pigs, when he owns less than four, as was the case here. Will you please advise me, however, whether in these circumstances any other offence has been committed by the collector or by the householder, *e.g.*, under the Larceny Act, 1916.

ANU.

Answer.

In our opinion, no. The container is not in a street or forecourt, so s. 76 (3) of the Public Health Act, 1936, is not available. The kitchen waste must, we think, still be the property of the householder. Suppose he has put a large bone in the container and afterwards is visited by a canine friend. We cannot think that he "steals," within the meaning of s. 1 of the Larceny Act, 1916, if, for his friend's entertainment, he retrieves the bone which is still on his premises, even though it had been placed in the container which is not his property. It is still his bone. It follows that he can equally consent, within the section cited, to its being taken and carried away by somebody else.

3.—Election—*Borough councillors — Ordinary and casual vacancies — Insufficient candidates.*

A borough council election is being held to fill five vacancies (four ordinary vacancies and one casual vacancy). Four candidates have been validly nominated. Of the four candidates so nominated, two are retiring councillors. Both of the remaining two retiring councillors have resigned. How are the vacancies to be filled? There are no retiring councillors left to fill the vacancy left, assuming that rule 13 (5) of the Local Election Rules applies. Must lots be drawn under s. 67 (5) (*b*) of the Local Government Act, 1933, to determine who fills the casual vacancy? If so, must the holding of the council meeting at which such lots are drawn await the publication of the names of the persons elected required under Local Election Rule 46 (2)? If a fresh election must be held under s. 72 (1) (*b*) of the Local Government Act, 1933, to fill the outstanding vacancy, will this vacancy be a casual vacancy?

ALEC.

Answer.

It might be thought more satisfactory that the four nominated candidates should be deemed elected into the four ordinary vacancies, leaving the casual vacancy, carrying the shorter term of office, to be treated as unfilled and calling for a new election, which would, as indicated at the end of the query, be for the filling of a casual vacancy. But s. 67 (5) (*b*), *supra*, applies in so many words to this case (we see that *Lumley*, p. 816, note (*e*), takes this view) and it follows that lots must be drawn at the first council meeting after the election, under s. 67 (7), and a fresh election to fill one of the ordinary vacancies must be ordered under s. 72 (1).

4.—Housing—*Small Dwellings Acquisition Acts—Husband and wife.*

It has been suggested that it is not lawful for a local authority to advance money under the Small Dwellings Acquisition Acts in cases where houses are to be acquired jointly by husband and wife, as the provisions relating to conditions of residence and death or bankruptcy of the proprietor can only apply to one person.

Do you agree?

A. "LENDER."

Answer.

We feel some doubt, whether the normal rule of construction, that the singular includes the plural, is ousted by the context here, as a matter of law. Residence might not present much difficulty, since on death of either party the other would presumably continue to reside. Nor need bankruptcy. On the husband's bankruptcy, the wife might go on making payments if she had money of her own; if not, s. 3 (3) or s. 3 (5) would still be available. Whether the council will, in practice, make such advances is another matter, but, if the two persons both have money to invest, are not two solvent borrowers better business than one?

5.—Husband and Wife—*Divorce with order of maintenance for petitioner and child—Subsequent re-marriage—Husband then deserts—Can wife proceed summarily?*

A and B were married in 1939 and a decree absolute was made in 1947 on the ground of desertion. Following the decree absolute an order of maintenance was made in favour of the petitioner and the one child of the marriage. A few months after the last-mentioned order was made A and B re-married, but the husband has recently, again, deserted the wife. The wife now desires to apply for a magistrates' order. Do you agree that she can do so, notwithstanding the previous proceedings in the High Court?

JEL.

Answer.

Yes—on re-marriage the parties are in the same position as any other married couple, and if the new marriage breaks down the ordinary remedies are available.

6.—Licensing—*Scheme to take into licensed premises a completely detached unlicensed neighbouring building—Application.*

Licensed premises include a room, constructed in outbuildings, as a dining room, in which drinks can legally be served. It is desired to close that room and use another building, a few yards distant (not at present licensed) in lieu thereof. Must such application be made at the annual or adjourned licensing meeting, or have justices power to hear the application at a transfer sessions?

We have advised that it constitutes a removal which can only be heard at the annual or adjourned licensing meeting, but should like another opinion.

NOVA.

Answer.

The information given by our correspondent indicates that the proposed scheme corresponds almost exactly with that in *R.* v. *Isle of Wight JJ.* (1931) *Brewing Trade Review Law Reports* 124, in that it contemplates taking into the licensed premises a completely detached

neighbouring building which, as it seems, will continue so to be detached. Such a scheme was held to be outside the ambit of s.71 of the Licensing (Consolidation) Act, 1910, a decision carefully distinguished by the Court of Appeal in *R.* v. *Weston-super-Mare Licensing JJ., Ex parte Powell* (1939) 103 J.P. 95, the leading case on alteration of licensed premises.

Effect can only be given to the proposal by the grant of an ordinary removal under s. 26 of the Licensing (Consolidation) Act, 1910, or of a new licence coupled with the surrender of the existing licence under s. 73 of the Finance Act, 1947. In either case, application must be made at the general annual licensing meeting or an adjournment thereof.

7.—Magistrates—*Committal for sentence—Criminal Justice Act, 1948, s. 29—Borough with separate court of quarter sessions—Can committal be to quarter sessions for the county in which borough is situated?*

Recently, justices acting for a borough having a separate court of quarter sessions, committed a man in custody to the borough quarter sessions for sentence under s. 29 of the Criminal Justice Act, 1948. Under subs. 2 (*b*) of this section it is stated: "In any other case to the next court of quarter sessions having jurisdiction in the county, borough or place for which the court of summary jurisdiction acts." Could the justices, under this subsection, have committed this man to the next quarter sessions for the county in which the borough is situated and which will be held first, instead of to the quarter sessions for the borough?

JECU.

Answer.

We think not. We are not aware of any ruling on the point, but on the wording of s. 29 (2) (*b*) we think that jurisdiction is intended to be confined to the quarter sessions for the borough.

8.—Private Street Works—*Public Health Act, 1875—Property divided into strips parallel with street.*

The council carry out private street works under the Public Health Act, 1875, and a point has recently arisen upon which I have been unable to find any direct authority.

The facts briefly are as follows:—

The freeholder of a house, the garden of which abuts on X street (not being a highway repairable by the inhabitants at large), intends to divide the house horizontally into three self-contained flats and to sell off independently to separate purchasers, each flat. He intends also to divide the garden into three parts in order that the purchaser of the ground floor flat will become the owner of that portion of the garden nearest to X street, the purchaser of the middle flat will become the owner of the middle portion of the garden, while the purchaser of the top floor flat will become the owner of that portion of the garden nearest to the house (*i.e.*, furthest away from X street). I have been asked whether, in the event of the local authority's making up the street under their Public Health Act powers, the cost thereof must be recovered only from the owner of that portion of the garden nearest to X street, or whether in view of the fact that the owners of the other portions of garden also have access to X street, the cost can properly be divided into three portions and each owner be made liable for only one third of the total cost.

It will be remembered that in *Reg* v. *Newport Local Board* (1863) 32 L.J.M.C. 97, the owner of premises actually adjoining the street was held liable in respect of the expenses apportioned against premises notwithstanding that he had no access from his premises to the street, whereas in the example given above the owners of the middle and top flats respectively have access to the street in question and therefore *a fortiori* seem to be properly chargeable with an equal portion of the cost involved. I have not overlooked the case of *Lighthound* v. *Higher Bebington Local Board* (1885) 50 J.P. 500, which appears to be authority for the proposition that, if there is any intervening strip of land between the street and the premises, the premises do not "front, adjoin, or abut on" the street within the meaning of the Act. In that case it seems the presence of an intervening wall prevented the other owner from obtaining access to the street in respect of which the charges were sought to be recovered. It seems to me that the basis of the decisions which precluded liability in the case of intervening strips of land is that the intervening strip should have the effect of preventing the possibility of access to the street, and in such case it would be reasonable to argue that, where land is so positioned, then it cannot be said to front, adjoin, or abut in such way as to render it liable to carry a portion of the charge involved.

Reference is made to the Scottish case of *Campbell* v. *Edinburgh Magistrates* (1891) 19 R. (Court of Session), 159, where under a somewhat similar Act it was held that the upper flat of a tenement held with a plot of garden fronting A street on the west and bounded by B street on the north was premises abutting on B street although the only entrance was from A street.

Please consider and advise:—

1. Whether each portion of the garden held in separate ownership can be made to bear an equal proportion of the road charges.
2. If the answer to 1 is in the negative, do you consider that the manner in which the house has been divided has any bearing on the matter?
3. Do you consider that the only portion of land which can be considered as fronting, adjoining or abutting on X street is that which is nearest to the street?

A. "SALUS."

Answer.

1. We think all the purchasers are liable, for reasons appearing in your statement of the case, but the course which the vendor is taking is peculiar, involving rather complicated rights of way. We note that each purchaser will have access to the street, but how? It would be easier if the vendor had adopted the more usual plan of running his three strips at a right angle to the wall of the house, instead of parallel thereto, with cross-easements. Although each strip abuts, within the meaning of the Act as settled by the courts, we find difficulty in advising that "equal proportion" is right, because we do not know what frontage each purchaser will have. Contrast s. 150 of the Act of 1875 with s. 10 of the Private Street Works Act, 1892.
2. Does not arise.
3. No: see above.

9.—River Boards—*Control of main river—Prevention of pollution.*

Will you kindly advise:—

1. The difference, if any, in a river board's powers of control over a river or watercourse which is treated as a "main" river for the purpose of Part II of the Land Drainage Act, 1930, and one which is not so defined;
2. Whether the board can compel any industrial or manufacturing undertaking to discharge polluting liquid into the proposed sewage scheme of a local authority, which now discharges direct into a river.

ARDS.

Answer.

1. The River Boards Act, 1948, does not (generally) confer new functions, and apparently the river board as successor of the catchment board has no greater powers over a "main river" than over other watercourses, except under s. 6 (2) of the Land Drainage Act, 1930, in regard to outfall.
2. We would prefer to answer the question by saying that the river board have the powers and duties formerly exercisable by sanitary authorities and (under s. 14 of the Local Government Act, 1888) by county councils. Discharge into a local authority's sewers may, however, be subject to restrictions. We are not told what the "polluting liquid" is; it may be one which the local authority are not bound to accept.

10.—Road Traffic Acts—*Driving licence—Requirement in insurance policy that the insured must hold or have held a driving licence—Is an authority under the Defence Regulations given to an army driver such a licence?*

I shall be obliged if you can give your opinion generally in the following case.

A person is to be summoned for an offence against s. 35 of the Road Traffic Act, 1930, for driving a vehicle without insurance. On being asked to produce his certificate of insurance this proposed defendant produced a certificate which was to be void "unless the insured holds, or has held, and is not disqualified from holding a driving licence"; he has no driving licence and has never held a driving licence under the Road Traffic Acts, although he has driven under the authority of the Defence Regulations whilst in the army. I appreciate that the defendant may call a representative of the insurance company as a witness to say, if such be the case, that the company regard him as covered by the policy, but if he does not do so the court must determine what is meant by these words, in other words this means interpreting the terms of a written agreement. I am of opinion that an authority to drive under the Defence Regulations is not a driving licence within the meaning of the insurance policy, but cannot find any direct authority for this opinion.

JIN.

Answer.

We agree that the "authority" is not a driving licence. The insurance policy is issued in connexion with the Road Traffic Acts and we think that a driving licence for the purposes of the policy must be a driving licence within the meaning of those Acts. (*See* s. 4 (8) of the 1930 Act).

We know of no authority on the point. We answered a similar question at 112 J.P.N. 80, P.P. 13.

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